



## Proposed Regulation Agency Background Document

<b>Agency name</b>	DEPT OF MEDICAL ASSISTANCE SERVICES
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 30 -70 and 30-80
<b>Regulation title</b>	Methods and Standards Used for Establishing Payment Rates: Inpatient Hospital Reimbursement;
<b>Action title</b>	Outpatient Rehabilitation Agency and Long Stay Hospital Reimbursement
<b>Date this document prepared</b>	January 13, 2010

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.*

This regulatory action is intended to change the reimbursement for outpatient rehabilitation agencies and Comprehensive Outpatient Rehabilitation Facilities (CORFs) from a cost based methodology to the new fee schedule methodology. CORFs are being removed from the list of providers who are reimbursed on a cost-basis in 12VAC 30-80-200 and will implement a statewide fee schedule methodology for outpatient rehabilitation agencies.

This action will also reduce reimbursement to long-stay hospitals (12VAC 30-70-50). Currently, these providers (only 2 facilities) are being reimbursed based on the methodology that was in effect for all hospitals prior to the implementation of the Diagnosis Related Groups prospective reimbursement methodology. The changes to the old methodology include the reduction of the “incentive plan,” the elimination of an additional 2% annually added to the escalator, and modification of the disproportionate share hospital (DSH) utilization threshold percentage.

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services.

Specifically, Item 306 XX and Item 306 BBB of the 2009 *Act of the Assembly* (Chapter 781) required DMAS to make these changes:

**XX. Effective July 1, 2009, the Department of Medical Assistance Services shall amend the State Plan for Medical Assistance to convert the current reimbursement methodology for rehabilitation agencies to a statewide prospective rate for individual and group services to achieve estimated savings of \$185,909 the second year in general funds and \$185,909 the second year in nongeneral funds. The department shall have the authority to promulgate emergency regulations to implement this amendment within 280 days or less from the enactment of this act. This shall not apply to rehabilitation services furnished by the Community Services Boards.**

**BBB. Effective July 1, 2009, the Department of Medicaid Assistance Services shall amend the State Plan for Medical Assistance to reduce reimbursement to long-stay hospitals to achieve savings in the second year of \$990,000 general fund and \$990,000 non-general fund. The department shall promulgate regulations to implement this amendment no more than 280 days from the enactment of this act.**

## Purpose

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.*

### **Outpatient Rehabilitation Facility Reimbursement**

The purpose of this regulatory action is to incorporate into 12 VAC 30-80-200 the changes made in the previous emergency regulation, with some modification. The proposed text here is the same as the final text in a separate final regulatory action (Ambulatory Surgery Center and Outpatient Rehabilitation Facility Reimbursement -- Town Hall 2690/5345) that also addressed 12 VAC 30-80-200. This regulatory action provides both the public and the Agency the

opportunity further address provider questions and issues with the new methodology. There are no expected environmental benefits from these changes.

### **Long-Stay Hospital Reimbursement**

The purpose of this action is to incorporate into the Virginia Administrative Code the changes to 12 VAC 30-70-50 as adopted by the previous emergency regulation action: reduction of the incentive plan; elimination of an additional 2% that has been added annually to the escalator; and modification of the DSH utilization percentage. This proposed regulatory action is not essential to protect the health safety, or welfare of the citizens of the Commonwealth. It is also not expected to have any environmental benefits. The issues addressed by this action are the reduction of payment amounts being made to these two hospitals.

## **Substance**

*Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)*

### **Outpatient Rehabilitation Agency Reimbursement**

The section of the State Plan of Medical Assistance that is affected by these changes is the Methods and Standards for Establishing Payment Rates - Other Types of Care (amending 12 VAC 30-80-200). This change implements a prospective statewide fee schedule methodology for outpatient rehabilitation agencies based on Current Procedural Terminology (CPT) codes. Rehabilitation services furnished by community services boards and state agencies will continue to be reimbursed on a cost basis. The fee schedule was developed to achieve savings totaling \$185,900 general funds dollars as required in the Governor's budget.

### **Long-Stay Hospital Reimbursement**

The section of the State Plan for Medical Assistance that is affected by this action is Methods and Standards for Establishing Payment Rates: Inpatient Hospital Services (12 VAC 30-70-50).

Long-Stay Hospitals currently are reimbursed based on the methodology in effect for all hospitals prior to the implementation of the prospective reimbursement methodology based on diagnosis-related-groups effective July 1, 1996. Several aspects of the methodology are no longer appropriate, but have never been changed since there are only a few hospitals (two currently) being reimbursed using this methodology. The changes to the old methodology include the reduction of the "incentive plan", the elimination of an additional 2% annually added to the "escalator", and modification of the Disproportionate Share Hospital (DSH) utilization threshold percentage.

The incentive plan currently pays a hospital up to 25% of the difference between the ceiling and its cost per day. As a result of the incentive plan, hospitals can be reimbursed more than their costs. The regulatory change reduces the maximum incentive plan to up to 10.5% of the difference between the ceiling and its cost per day. The escalator, which is currently inflation plus 2%, is used to increase the ceilings and the operating cost per day. The regulation will

change the escalator to just inflation. Currently, DSH is calculated by multiplying the difference between the Medicaid utilization percentage and the Medicaid utilization threshold of 8% times the prospective cost per day. The regulation will increase the utilization threshold from 8% to 10.5%. The regulatory changes are projected to save \$1.98 million (total funds) in FY10.

**Please Note:** DMAS has been in the process of implementing the Outpatient Rehabilitation Agency Reimbursement changes through a non-emergency regulatory process initiated in 2008. DMAS published a NOIRA (Town Hall 2690/4671 on 9/24/08 (VAR 25:3) and had a proposed regulation (Town Hall 2690/4933) which addressed this element of the Outpatient Rehabilitation package. The final regulation made these changes permanent on March 3, 2010 (Ambulatory Surgery Center and Outpatient Rehabilitation Facility Reimbursement--Town Hall 2690/5345, published VAR 26:11). The 2009 budget required DMAS to implement the Outpatient Rehabilitation Agency Reimbursement changes prior to its originally scheduled implementation date via an emergency regulation. While the Agency has finalized the outpatient rehabilitation reimbursement in the previously cited action, DMAS has included the same section in this proposed regulation. By doing so the Agency has the opportunity to consider provider feedback to the new reimbursement methodology.

## Issues

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

*If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.*

### **Outpatient Rehabilitation Facility Reimbursement**

Currently, the Virginia Administrative Code contains a cost-based methodology for computing reimbursement for outpatient rehabilitation services which is subject to a ceiling (12VAC 30-80-200). For rehabilitation services, Medicare and most commercial insurers use a fee schedule. As a result, outpatient rehabilitation agencies bill differently and submit a cost report only for Medicaid. Providers will no longer have to submit cost reports and DMAS will no longer have to settle the cost reports. Discontinuing both of these activities will result in administrative savings to both rehab providers and the Commonwealth.

There are no disadvantages to the citizens of the Commonwealth for these changes as they are not expected to have an impact on the delivery of these services. The advantage to the citizens of the Commonwealth is the reduction in providers' and agency's costs associated with these changes. Some providers objected to the manner in which the Agency implemented the new methodology. DMAS has indicated that it will continue to work with the provider community through this current regulatory process.

**Long-Stay Hospitals Reimbursement**

This regulatory action poses no disadvantages to the public or the Commonwealth. If the proposed change is not implemented, it will mean the ongoing expenditures to two hospitals contrary to the General Assembly’s directive. The primary advantage to the Commonwealth will be the reduction in payment amounts to these two enrolled Medicaid providers.

**Requirements more restrictive than federal**

*Please identify and describe any requirement of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

There are no requirements contained in this proposal that are more restrictive than federal requirements.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

There are no localities that are uniquely affected by this action as it will be applied statewide.

**Public participation**

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Townhall website, [www.townhall.virginia.gov](http://www.townhall.virginia.gov), or by mail, email or fax to Carla Russell, Manager, Division of Provider Reimbursement, DMAS, 600 East Broad street, Suite 1300, Richmond, VA 23219 (804/225-4586; fax 804/371-8892) ([Carla.Russell@dmas.virginia.gov](mailto:Carla.Russell@dmas.virginia.gov)). Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period.

**Economic impact**

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.*

**Outpatient Rehabilitation Facility Reimbursement**

This reimbursement methodology change is expected to achieve a total savings of \$371,800 (\$185,900 non-general funds; 185,900 in general funds).

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b></p>	<p>The implementation of the new reimbursement methodology will achieve savings of \$185,900 GF. DMAS will use its current funding for MMIS changes to implement this methodology. DMAS will annually save \$48,500 GF since it will no longer audit and settle cost reports.</p>
<p><b>Projected cost of the regulation on localities</b></p>	<p>There are no projected costs on localities.</p>
<p><b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b></p>	<p>Outpatient rehabilitation agencies enrolled in the Virginia Medicaid Program excluding community service boards and state agencies.</p>
<p><b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>Approximately 100.</p>
<p><b>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</b></p>	<p>This regulation is intended to achieve savings for the Commonwealth but the impact will vary by provider. Some individual providers may receive reduced reimbursement and others may gain. Individual providers would experience little to no administrative costs as the claim reporting requirements are not affected. Providers will each save approximately \$2000 annually since they will no longer have to prepare cost reports.</p>

**Long-Stay Hospital Reimbursement**

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</b></p>	<p>Estimated cost savings of \$1.98 million total funds, 0.99 million general funds.</p>
<p><b>Projected cost of the new regulations or changes to existing regulations on localities.</b></p>	<p>None.</p>

<b>Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</b>	Two long stay hospitals.
<b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	None.
<b>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and do include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b>	None.
<b>Beneficial impact the regulation is designed to produce.</b>	Cost savings for the Commonwealth.

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

**Outpatient Rehabilitation Facility Reimbursement**

An alternative to this regulatory action is to convert the outpatient rehabilitation methodology to a time-unit base methodology, paying the same rate for all rehabilitation services in 15-minute increments. Since the cost to prepare a cost report does not vary significantly by size of business, it’s more burdensome on small businesses. Either proposal would eliminate the requirement to prepare and submit a cost report.

**Long-Stay Hospital Reimbursement**

DMAS considered other alternatives, particularly the elimination of the incentive plan as well as reductions to the ceilings. The alternative chosen, however, most closely achieves the required savings while sharing the reduction appropriately between the affected hospitals.

**Regulatory flexibility analysis**

*Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or*

*simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

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**Outpatient Rehabilitation Facility Reimbursement**

An alternative to this regulatory action is to convert the outpatient rehabilitation methodology to a time-unit based methodology, paying the same rate for all rehabilitation services in 15-minute increments. Since the cost to prepare a cost report does not vary significantly by size of business, it's more burdensome on small businesses. Either proposal would eliminate the requirement to prepare and submit a cost report.

**Long-Stay Hospital Reimbursement**

The proposed changes have no effect on the reporting requirements or performance standards for small businesses. There is no compliance or operational changes that will be required for small businesses as a consequence of this regulatory action.

**Public comment**

*Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.*

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DMAS' Notice of Intended Regulatory Action was published in the July 20, 2009, Virginia Register (VR 25:23) for its public comment period from July 20, 2009 to September 2, 2009. No comments were received on the Town Hall for this NOIRA.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents. It does not strengthen or erode the marital commitment.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please detail the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.*

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

**Outpatient Rehabilitation Facility Reimbursement**

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12VAC30-80-200	N/A	Reimburses a prospective rate for outpatient rehabilitation services equal to the lesser of an agency's cost per visit for each type of service (physical, occupational, or speech therapy) or statewide ceiling.	Modifies this methodology to begin reimbursing outpatient rehabilitation services according to a statewide fee schedule.
12 VAC 30-80-200	--200(B)	--200(C) set up an interim payment rate for outpatient rehab agencies in the emergency reg.	In the proposed, DMAS has changed this from the interim rate to being cost-settled.
12 VAC 30-80-20	N/A	Describes services reimbursed on a cost basis.	Removes CORFS from the list of providers that are cost-reimbursed

**Long-Stay Hospital Reimbursement**

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, rationale, and consequences
12VAC30-70-50(E)	N/A	Contains an incentive plan percentage that hospitals are to be paid between the allowable operating costs and per diem group ceiling when the allowable operating costs are lower than the ceiling. Section also contains an outdated table of examples.	Propose to reduce the percentage from 25% to 10.5%. This is needed to achieve the cost savings directed by the GA in its mandate. The outdated table is proposed to be removed as the example is no longer relevant.
12VAC30-70-50(G)	N/A	DSH methodology contains a Medicaid inpatient utilization percentage of 8% as the level required to be met in order to qualify for the additional payment.	Propose to increase percentage to 10.5% as the new standard that must be met in order to qualify for the additional DSH payment.
12 VAC 30-70-50(C)		The annual escalator equals inflation plus 2%.	Changed to the annual escalator equals inflation.